



General Assembly

February Session, 2016

Amendment

LCO No. 5953



Offered by:
SEN. SLOSSBERG, 14th Dist.

To: Subst. House Bill No. 5363

File No. 187

Cal. No. 585

"AN ACT CONCERNING THE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 8-30g of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2016*):

5 (a) As used in this section:

6 (1) "Affordable housing development" means a proposed housing
7 development which is (A) assisted housing, or (B) a set-aside
8 development;

9 (2) "Affordable housing application" means any application made to
10 a commission in connection with an affordable housing development
11 by a person who proposes to develop such affordable housing;

12 (3) "Assisted housing" means housing which is receiving, or will
13 receive, financial assistance under any governmental program for the

14 construction or substantial rehabilitation of low and moderate income
15 housing, and any housing occupied by persons receiving rental
16 assistance under chapter 319uu or Section 1437f of Title 42 of the
17 United States Code;

18 (4) "Commission" means a zoning commission, planning
19 commission, planning and zoning commission, zoning board of
20 appeals or municipal agency exercising zoning or planning authority;

21 (5) "Municipality" means any town, city or borough, whether
22 consolidated or unconsolidated;

23 (6) "Set-aside development" means a development in which not less
24 than thirty per cent of the dwelling units will be conveyed by deeds
25 containing covenants or restrictions which shall require that, for at
26 least forty years after the initial occupation of the proposed
27 development, such dwelling units shall be sold or rented at, or below,
28 prices which will preserve the units as housing for which persons and
29 families pay thirty per cent or less of their annual income, where such
30 income is less than or equal to eighty per cent of the median income. In
31 a set-aside development, of the dwelling units conveyed by deeds
32 containing covenants or restrictions, a number of dwelling units equal
33 to not less than fifteen per cent of all dwelling units in the
34 development shall be sold or rented to persons and families whose
35 income is less than or equal to sixty per cent of the median income and
36 the remainder of the dwelling units conveyed by deeds containing
37 covenants or restrictions shall be sold or rented to persons and families
38 whose income is less than or equal to eighty per cent of the median
39 income;

40 (7) "Median income" means, after adjustments for family size, the
41 lesser of the state median income or the area median income for the
42 area in which the municipality containing the affordable housing
43 development is located, as determined by the United States
44 Department of Housing and Urban Development; and

45 (8) "Commissioner" means the Commissioner of Housing.

46 (b) (1) Any person filing an affordable housing application with a
47 commission shall submit, as part of the application, an affordability
48 plan which shall include at least the following: (A) Designation of the
49 person, entity or agency that will be responsible for the duration of any
50 affordability restrictions, for the administration of the affordability
51 plan and its compliance with the income limits and sale price or rental
52 restrictions of this chapter; (B) an affirmative fair housing marketing
53 plan governing the sale or rental of all dwelling units; (C) a sample
54 calculation of the maximum sales prices or rents of the intended
55 affordable dwelling units; (D) a description of the projected sequence
56 in which, within a set-aside development, the affordable dwelling
57 units will be built and offered for occupancy and the general location
58 of such units within the proposed development; and (E) draft zoning
59 regulations, conditions of approvals, deeds, restrictive covenants or
60 lease provisions that will govern the affordable dwelling units.

61 (2) The commissioner shall, within available appropriations, adopt
62 regulations pursuant to chapter 54 regarding the affordability plan.
63 Such regulations may include additional criteria for preparing an
64 affordability plan and shall include: (A) A formula for determining
65 rent levels and sale prices, including establishing maximum allowable
66 down payments to be used in the calculation of maximum allowable
67 sales prices; (B) a clarification of the costs that are to be included when
68 calculating maximum allowed rents and sale prices; (C) a clarification
69 as to how family size and bedroom counts are to be equated in
70 establishing maximum rental and sale prices for the affordable units;
71 and (D) a listing of the considerations to be included in the
72 computation of income under this section.

73 (c) Any commission, by regulation, may require that an affordable
74 housing application seeking a change of zone shall include the
75 submission of a conceptual site plan describing the proposed
76 development's total number of residential units and their arrangement
77 on the property and the proposed development's roads and traffic
78 circulation, sewage disposal and water supply.

79 (d) For any affordable dwelling unit that is rented as part of a set-
80 aside development, if the maximum monthly housing cost, as
81 calculated in accordance with subdivision (6) of subsection (a) of this
82 section, would exceed one hundred per cent of the Section 8 fair
83 market rent as determined by the United States Department of
84 Housing and Urban Development, in the case of units set aside for
85 persons and families whose income is less than or equal to sixty per
86 cent of median income, then such maximum monthly housing cost
87 shall not exceed one hundred per cent of said Section 8 fair market
88 rent. If the maximum monthly housing cost, as calculated in
89 accordance with subdivision (6) of subsection (a) of this section, would
90 exceed one hundred twenty per cent of the Section 8 fair market rent,
91 as determined by the United States Department of Housing and Urban
92 Development, in the case of units set aside for persons and families
93 whose income is less than or equal to eighty per cent of median
94 income, then such maximum monthly housing cost shall not exceed
95 one hundred twenty per cent of such Section 8 fair market rent.

96 (e) For any affordable dwelling unit that is rented in order to
97 comply with the requirements of a set-aside development, no person
98 shall impose on a prospective tenant who is receiving governmental
99 rental assistance a maximum percentage-of-income-for-housing
100 requirement that is more restrictive than the requirement, if any,
101 imposed by such governmental assistance program.

102 (f) Any person whose affordable housing application is denied, or is
103 approved with restrictions which have a substantial adverse impact on
104 the viability of the affordable housing development or the degree of
105 affordability of the affordable dwelling units in a set-aside
106 development, may appeal such decision pursuant to the procedures of
107 this section. Such appeal shall be filed within the time period for filing
108 appeals as set forth in section 8-8, 8-9, 8-28 or 8-30a, as applicable, and
109 shall be made returnable to the superior court for the judicial district
110 where the real property which is the subject of the application is
111 located. Affordable housing appeals, including pretrial motions, shall
112 be heard by a judge assigned by the Chief Court Administrator to hear

113 such appeals. To the extent practicable, efforts shall be made to assign
114 such cases to a small number of judges, sitting in geographically
115 diverse parts of the state, so that a consistent body of expertise can be
116 developed. Unless otherwise ordered by the Chief Court
117 Administrator, such appeals, including pretrial motions, shall be heard
118 by such assigned judges in the judicial district in which such judge is
119 sitting. Appeals taken pursuant to this subsection shall be privileged
120 cases to be heard by the court as soon after the return day as is
121 practicable. Except as otherwise provided in this section, appeals
122 involving an affordable housing application shall proceed in
123 conformance with the provisions of said section 8-8, 8-9, 8-28 or 8-30a,
124 as applicable.

125 (g) Upon an appeal taken under subsection (f) of this section, the
126 burden shall be on the [commission] appellant to prove, based upon
127 the evidence in the record compiled before [such] the commission, that
128 the decision from which such appeal is taken and the reasons cited for
129 such decision are not supported by sufficient evidence in the record.
130 The [commission] appellant shall also have the burden to prove, based
131 upon the evidence in the record compiled before such commission,
132 that (1) (A) the decision is not necessary to protect substantial public
133 interests in health, safety or other matters which the commission may
134 legally consider; (B) such public interests do not clearly outweigh the
135 need for affordable housing; and (C) such public interests [cannot] can
136 be protected by reasonable changes to the affordable housing
137 development, or (2) (A) the application which was the subject of the
138 decision from which such appeal was taken would not locate
139 affordable housing in an area which is zoned for industrial use and
140 which does not permit residential uses; and (B) the development is
141 [not] assisted housing, as defined in subsection (a) of this section. If the
142 [commission] appellant does not satisfy its burden of proof under this
143 subsection, the court shall wholly or partly revise, modify, remand or
144 reverse the decision from which the appeal was taken in a manner
145 consistent with the evidence in the record before it.

146 (h) Following a decision by a commission to reject an affordable

147 housing application or to approve an application with restrictions
148 which have a substantial adverse impact on the viability of the
149 affordable housing development or the degree of affordability of the
150 affordable dwelling units, the applicant may, within the period for
151 filing an appeal of such decision, submit to the commission a proposed
152 modification of its proposal responding to some or all of the objections
153 or restrictions articulated by the commission, which shall be treated as
154 an amendment to the original proposal. The day of receipt of such a
155 modification shall be determined in the same manner as the day of
156 receipt is determined for an original application. The filing of such a
157 proposed modification shall stay the period for filing an appeal from
158 the decision of the commission on the original application. The
159 commission shall hold a public hearing on the proposed modification
160 if it held a public hearing on the original application and may hold a
161 public hearing on the proposed modification if it did not hold a public
162 hearing on the original application. The commission shall render a
163 decision on the proposed modification not later than sixty-five days
164 after the receipt of such proposed modification, provided, if, in
165 connection with a modification submitted under this subsection, the
166 applicant applies for a permit for an activity regulated pursuant to
167 sections 22a-36 to 22a-45, inclusive, and the time for a decision by the
168 commission on such modification under this subsection would lapse
169 prior to the thirty-fifth day after a decision by an inland wetlands and
170 watercourses agency, the time period for decision by the commission
171 on the modification under this subsection shall be extended to thirty-
172 five days after the decision of such agency. The commission shall issue
173 notice of its decision as provided by law. Failure of the commission to
174 render a decision within said sixty-five days or subsequent extension
175 period permitted by this subsection shall constitute a rejection of the
176 proposed modification. Within the time period for filing an appeal on
177 the proposed modification as set forth in section 8-8, 8-9, 8-28 or 8-30a,
178 as applicable, the applicant may appeal the commission's decision on
179 the original application and the proposed modification in the manner
180 set forth in this section. Nothing in this subsection shall be construed
181 to limit the right of an applicant to appeal the original decision of the

182 commission in the manner set forth in this section without submitting
183 a proposed modification or to limit the issues which may be raised in
184 any appeal under this section.

185 (i) Nothing in this section shall be deemed to preclude any right of
186 appeal under the provisions of section 8-8, 8-9, 8-28 or 8-30a.

187 (j) A commission or its designated authority shall have, with respect
188 to compliance of an affordable housing development with the
189 provisions of this chapter, the same powers and remedies provided to
190 commissions by section 8-12.

191 (k) Notwithstanding the provisions of subsections (a) to (j),
192 inclusive, of this section, the affordable housing appeals procedure
193 established under this section shall not be available if the real property
194 which is the subject of the application is located in a municipality in
195 which at least ten per cent of all dwelling units in the municipality are
196 (1) assisted housing, or (2) currently financed by Connecticut Housing
197 Finance Authority mortgages, or (3) subject to binding recorded deeds
198 containing covenants or restrictions which require that such dwelling
199 units be sold or rented at, or below, prices which will preserve the
200 units as housing for which persons and families pay thirty per cent or
201 less of income, where such income is less than or equal to eighty per
202 cent of the median income, or (4) mobile manufactured homes located
203 in mobile manufactured home parks or legally approved accessory
204 apartments, which homes or apartments are subject to binding
205 recorded deeds containing covenants or restrictions which require that
206 such dwelling units be sold or rented at, or below, prices which will
207 preserve the units as housing for which, for a period of not less than
208 ten years, persons and families pay thirty per cent or less of income,
209 where such income is less than or equal to eighty per cent of the
210 median income. The municipalities meeting the criteria set forth in this
211 subsection shall be listed in the report submitted under section 8-
212 37qqq. As used in this subsection, "accessory apartment" means a
213 separate living unit that (A) is attached to the main living unit of a
214 house, which house has the external appearance of a single-family

215 residence, (B) has a full kitchen, (C) has a square footage that is not
216 more than thirty per cent of the total square footage of the house, (D)
217 has an internal doorway connecting to the main living unit of the
218 house, (E) is not billed separately from such main living unit for
219 utilities, and (F) complies with the building code and health and safety
220 regulations.

221 (l) (1) Notwithstanding the provisions of subsections (a) to (j),
222 inclusive, of this section, the affordable housing appeals procedure
223 established under this section shall not be applicable to an affordable
224 housing application filed with a commission during a moratorium,
225 which shall be the four-year period after (A) a certification of
226 affordable housing project completion issued by the commissioner is
227 published in the Connecticut Law Journal, or (B) after notice of a
228 provisional approval is published pursuant to subdivision (4) of this
229 subsection. Any moratorium that is in effect on October 1, 2002, is
230 extended by one year.

231 (2) Notwithstanding the provisions of this subsection, such
232 moratorium shall not apply to (A) affordable housing applications for
233 assisted housing in which ninety-five per cent of the dwelling units are
234 restricted to persons and families whose income is less than or equal to
235 sixty per cent of median income, (B) other affordable housing
236 applications for assisted housing containing forty or fewer dwelling
237 units, or (C) affordable housing applications which were filed with a
238 commission pursuant to this section prior to the date upon which the
239 moratorium takes effect.

240 (3) Eligible units completed after a moratorium has begun may be
241 counted toward establishing eligibility for a subsequent moratorium.

242 (4) (A) The commissioner shall issue a certificate of affordable
243 housing project completion for the purposes of this subsection upon
244 finding that there has been completed within the municipality one or
245 more affordable housing developments which create housing unit-
246 equivalent points equal to the greater of two per cent of all dwelling

247 units in the municipality, as reported in the most recent United States
248 decennial census, or [seventy-five] fifty housing unit-equivalent points.

249 (B) A municipality may apply for a certificate of affordable housing
250 project completion pursuant to this subsection by applying in writing
251 to the commissioner, and including documentation showing that the
252 municipality has accumulated the required number of points within
253 the applicable time period. Such documentation shall include the
254 location of each dwelling unit being counted, the number of points
255 each dwelling unit has been assigned, and the reason, pursuant to this
256 subsection, for assigning such points to such dwelling unit. Upon
257 receipt of such application, the commissioner shall promptly cause a
258 notice of the filing of the application to be published in the Connecticut
259 Law Journal, stating that public comment on such application shall be
260 accepted by the commissioner for a period of thirty days after the
261 publication of such notice. Not later than ninety days after the receipt
262 of such application, the commissioner shall either approve or reject
263 such application. Such approval or rejection shall be accompanied by a
264 written statement of the reasons for approval or rejection, pursuant to
265 the provisions of this subsection. If the application is approved, the
266 commissioner shall promptly cause a certificate of affordable housing
267 project completion to be published in the Connecticut Law Journal. If
268 the commissioner fails to either approve or reject the application
269 within such ninety-day period, such application shall be deemed
270 provisionally approved, and the municipality may cause notice of such
271 provisional approval to be published in a conspicuous manner in a
272 daily newspaper having general circulation in the municipality, in
273 which case, such moratorium shall take effect upon such publication.
274 The municipality shall send a copy of such notice to the commissioner.
275 Such provisional approval shall remain in effect unless the
276 commissioner subsequently acts upon and rejects the application, in
277 which case the moratorium shall terminate upon notice to the
278 municipality by the commissioner.

279 (5) For purposes of this subsection, "elderly units" are dwelling units
280 whose occupancy is restricted by age and "family units" are dwelling

281 units whose occupancy is not restricted by age.

282 (6) For purposes of this subsection, housing unit-equivalent points
283 shall be determined by the commissioner as follows: (A) No points
284 shall be awarded for a unit unless its occupancy is restricted to persons
285 and families whose income is equal to or less than eighty per cent of
286 median income, except that unrestricted units in a set-aside
287 development shall be awarded one-fourth point each. (B) Family units
288 restricted to persons and families whose income is equal to or less than
289 eighty per cent of median income shall be awarded one point if an
290 ownership unit and one and one-half points if a rental unit. (C) Family
291 units restricted to persons and families whose income is equal to or
292 less than sixty per cent of median income shall be awarded one and
293 one-half points if an ownership unit and two points if a rental unit. (D)
294 Family units restricted to persons and families whose income is equal
295 to or less than forty per cent of median income shall be awarded two
296 points if an ownership unit and two and one-half points if a rental
297 unit. (E) Restricted family units containing at least three bedrooms
298 shall be awarded an additional one-fourth point. (F) Elderly units
299 restricted to persons and families whose income is equal to or less than
300 eighty per cent of median income shall be awarded one-half point. [(F)]
301 (G) If at least sixty per cent of the total restricted units submitted by a
302 municipality as part of an application for a certificate of affordable
303 housing project completion are family units, any elderly units
304 submitted within such application shall be awarded an additional one-
305 half point. (H) Restricted family units located within an approved
306 incentive housing development, as defined in section 8-13m, as
307 amended by this act, shall be awarded an additional one-fourth point.
308 (I) A set-aside development containing family units which are rental
309 units shall be awarded additional points equal to twenty-two per cent
310 of the total points awarded to such development, provided the
311 application for such development was filed with the commission prior
312 to July 6, 1995.

313 (7) Points shall be awarded only for dwelling units which were (A)
314 newly-constructed units in an affordable housing development, as that

315 term was defined at the time of the affordable housing application, for
316 which a certificate of occupancy was issued after July 1, 1990, [or] (B)
317 newly subjected after July 1, 1990, to deeds containing covenants or
318 restrictions which require that, for at least the duration required by
319 subsection (a) of this section for set-aside developments on the date
320 when such covenants or restrictions took effect, such dwelling units
321 shall be sold or rented at, or below, prices which will preserve the
322 units as affordable housing for persons or families whose income does
323 not exceed eighty per cent of median income, or (C) located within an
324 approved incentive housing development, as defined in section 8-13m,
325 as amended by this act.

326 (8) Points shall be subtracted, applying the formula in subdivision
327 (6) of this subsection, for any affordable dwelling unit which, on or
328 after July 1, 1990, was affected by any action taken by a municipality
329 which caused such dwelling unit to cease being counted as an
330 affordable dwelling unit.

331 (9) A newly-constructed unit shall be counted toward a moratorium
332 when it receives a certificate of occupancy. A newly-restricted unit
333 shall be counted toward a moratorium when its deed restriction takes
334 effect.

335 (10) The affordable housing appeals procedure shall be applicable to
336 affordable housing applications filed with a commission after a three-
337 year moratorium expires, except (A) as otherwise provided in
338 subsection (k) of this section, or (B) when sufficient unit-equivalent
339 points have been created within the municipality during one
340 moratorium to qualify for a subsequent moratorium.

341 (11) The commissioner shall, within available appropriations, adopt
342 regulations in accordance with chapter 54 to carry out the purposes of
343 this subsection. Such regulations shall specify the procedure to be
344 followed by a municipality to obtain a moratorium, and shall include
345 the manner in which a municipality is to document the units to be
346 counted toward a moratorium. A municipality may apply for a

347 moratorium in accordance with the provisions of this subsection prior
348 to, as well as after, such regulations are adopted.

349 (m) The commissioner shall, pursuant to regulations adopted in
350 accordance with the provisions of chapter 54, promulgate model deed
351 restrictions which satisfy the requirements of this section. A
352 municipality may waive any fee which would otherwise be required
353 for the filing of any long-term affordability deed restriction on the land
354 records.

355 Sec. 2. Section 8-30g of the general statutes, as amended by section 1
356 of this act, is repealed and the following is substituted in lieu thereof
357 (*Effective October 1, 2021*):

358 (a) As used in this section:

359 (1) "Affordable housing development" means a proposed housing
360 development which is (A) assisted housing, or (B) a set-aside
361 development;

362 (2) "Affordable housing application" means any application made to
363 a commission in connection with an affordable housing development
364 by a person who proposes to develop such affordable housing;

365 (3) "Assisted housing" means housing which is receiving, or will
366 receive, financial assistance under any governmental program for the
367 construction or substantial rehabilitation of low and moderate income
368 housing, and any housing occupied by persons receiving rental
369 assistance under chapter 319uu or Section 1437f of Title 42 of the
370 United States Code;

371 (4) "Commission" means a zoning commission, planning
372 commission, planning and zoning commission, zoning board of
373 appeals or municipal agency exercising zoning or planning authority;

374 (5) "Municipality" means any town, city or borough, whether
375 consolidated or unconsolidated;

376 (6) "Set-aside development" means a development in which not less
377 than thirty per cent of the dwelling units will be conveyed by deeds
378 containing covenants or restrictions which shall require that, for at
379 least forty years after the initial occupation of the proposed
380 development, such dwelling units shall be sold or rented at, or below,
381 prices which will preserve the units as housing for which persons and
382 families pay thirty per cent or less of their annual income, where such
383 income is less than or equal to eighty per cent of the median income. In
384 a set-aside development, of the dwelling units conveyed by deeds
385 containing covenants or restrictions, a number of dwelling units equal
386 to not less than fifteen per cent of all dwelling units in the
387 development shall be sold or rented to persons and families whose
388 income is less than or equal to sixty per cent of the median income and
389 the remainder of the dwelling units conveyed by deeds containing
390 covenants or restrictions shall be sold or rented to persons and families
391 whose income is less than or equal to eighty per cent of the median
392 income;

393 (7) "Median income" means, after adjustments for family size, the
394 lesser of the state median income or the area median income for the
395 area in which the municipality containing the affordable housing
396 development is located, as determined by the United States
397 Department of Housing and Urban Development; and

398 (8) "Commissioner" means the Commissioner of Housing.

399 (b) (1) Any person filing an affordable housing application with a
400 commission shall submit, as part of the application, an affordability
401 plan which shall include at least the following: (A) Designation of the
402 person, entity or agency that will be responsible for the duration of any
403 affordability restrictions, for the administration of the affordability
404 plan and its compliance with the income limits and sale price or rental
405 restrictions of this chapter; (B) an affirmative fair housing marketing
406 plan governing the sale or rental of all dwelling units; (C) a sample
407 calculation of the maximum sales prices or rents of the intended
408 affordable dwelling units; (D) a description of the projected sequence

409 in which, within a set-aside development, the affordable dwelling
410 units will be built and offered for occupancy and the general location
411 of such units within the proposed development; and (E) draft zoning
412 regulations, conditions of approvals, deeds, restrictive covenants or
413 lease provisions that will govern the affordable dwelling units.

414 (2) The commissioner shall, within available appropriations, adopt
415 regulations pursuant to chapter 54 regarding the affordability plan.
416 Such regulations may include additional criteria for preparing an
417 affordability plan and shall include: (A) A formula for determining
418 rent levels and sale prices, including establishing maximum allowable
419 down payments to be used in the calculation of maximum allowable
420 sales prices; (B) a clarification of the costs that are to be included when
421 calculating maximum allowed rents and sale prices; (C) a clarification
422 as to how family size and bedroom counts are to be equated in
423 establishing maximum rental and sale prices for the affordable units;
424 and (D) a listing of the considerations to be included in the
425 computation of income under this section.

426 (c) Any commission, by regulation, may require that an affordable
427 housing application seeking a change of zone shall include the
428 submission of a conceptual site plan describing the proposed
429 development's total number of residential units and their arrangement
430 on the property and the proposed development's roads and traffic
431 circulation, sewage disposal and water supply.

432 (d) For any affordable dwelling unit that is rented as part of a set-
433 aside development, if the maximum monthly housing cost, as
434 calculated in accordance with subdivision (6) of subsection (a) of this
435 section, would exceed one hundred per cent of the Section 8 fair
436 market rent as determined by the United States Department of
437 Housing and Urban Development, in the case of units set aside for
438 persons and families whose income is less than or equal to sixty per
439 cent of median income, then such maximum monthly housing cost
440 shall not exceed one hundred per cent of said Section 8 fair market
441 rent. If the maximum monthly housing cost, as calculated in

442 accordance with subdivision (6) of subsection (a) of this section, would
443 exceed one hundred twenty per cent of the Section 8 fair market rent,
444 as determined by the United States Department of Housing and Urban
445 Development, in the case of units set aside for persons and families
446 whose income is less than or equal to eighty per cent of median
447 income, then such maximum monthly housing cost shall not exceed
448 one hundred twenty per cent of such Section 8 fair market rent.

449 (e) For any affordable dwelling unit that is rented in order to
450 comply with the requirements of a set-aside development, no person
451 shall impose on a prospective tenant who is receiving governmental
452 rental assistance a maximum percentage-of-income-for-housing
453 requirement that is more restrictive than the requirement, if any,
454 imposed by such governmental assistance program.

455 (f) Any person whose affordable housing application is denied, or is
456 approved with restrictions which have a substantial adverse impact on
457 the viability of the affordable housing development or the degree of
458 affordability of the affordable dwelling units in a set-aside
459 development, may appeal such decision pursuant to the procedures of
460 this section. Such appeal shall be filed within the time period for filing
461 appeals as set forth in section 8-8, 8-9, 8-28 or 8-30a, as applicable, and
462 shall be made returnable to the superior court for the judicial district
463 where the real property which is the subject of the application is
464 located. Affordable housing appeals, including pretrial motions, shall
465 be heard by a judge assigned by the Chief Court Administrator to hear
466 such appeals. To the extent practicable, efforts shall be made to assign
467 such cases to a small number of judges, sitting in geographically
468 diverse parts of the state, so that a consistent body of expertise can be
469 developed. Unless otherwise ordered by the Chief Court
470 Administrator, such appeals, including pretrial motions, shall be heard
471 by such assigned judges in the judicial district in which such judge is
472 sitting. Appeals taken pursuant to this subsection shall be privileged
473 cases to be heard by the court as soon after the return day as is
474 practicable. Except as otherwise provided in this section, appeals
475 involving an affordable housing application shall proceed in

476 conformance with the provisions of said section 8-8, 8-9, 8-28 or 8-30a,
477 as applicable.

478 (g) Upon an appeal taken under subsection (f) of this section, the
479 burden shall be on the appellant to prove, based upon the evidence in
480 the record compiled before the commission, that the decision from
481 which such appeal is taken and the reasons cited for such decision are
482 not supported by sufficient evidence in the record. The appellant shall
483 also have the burden to prove, based upon the evidence in the record
484 compiled before such commission, that (1) (A) the decision is not
485 necessary to protect substantial public interests in health, safety or
486 other matters which the commission may legally consider; (B) such
487 public interests do not clearly outweigh the need for affordable
488 housing; and (C) such public interests can be protected by reasonable
489 changes to the affordable housing development, or (2) (A) the
490 application which was the subject of the decision from which such
491 appeal was taken would not locate affordable housing in an area
492 which is zoned for industrial use and which does not permit
493 residential uses; and (B) the development is assisted housing, as
494 defined in subsection (a) of this section. If the appellant does not
495 satisfy its burden of proof under this subsection, the court shall wholly
496 or partly revise, modify, remand or reverse the decision from which
497 the appeal was taken in a manner consistent with the evidence in the
498 record before it.

499 (h) Following a decision by a commission to reject an affordable
500 housing application or to approve an application with restrictions
501 which have a substantial adverse impact on the viability of the
502 affordable housing development or the degree of affordability of the
503 affordable dwelling units, the applicant may, within the period for
504 filing an appeal of such decision, submit to the commission a proposed
505 modification of its proposal responding to some or all of the objections
506 or restrictions articulated by the commission, which shall be treated as
507 an amendment to the original proposal. The day of receipt of such a
508 modification shall be determined in the same manner as the day of
509 receipt is determined for an original application. The filing of such a

510 proposed modification shall stay the period for filing an appeal from
511 the decision of the commission on the original application. The
512 commission shall hold a public hearing on the proposed modification
513 if it held a public hearing on the original application and may hold a
514 public hearing on the proposed modification if it did not hold a public
515 hearing on the original application. The commission shall render a
516 decision on the proposed modification not later than sixty-five days
517 after the receipt of such proposed modification, provided, if, in
518 connection with a modification submitted under this subsection, the
519 applicant applies for a permit for an activity regulated pursuant to
520 sections 22a-36 to 22a-45, inclusive, and the time for a decision by the
521 commission on such modification under this subsection would lapse
522 prior to the thirty-fifth day after a decision by an inland wetlands and
523 watercourses agency, the time period for decision by the commission
524 on the modification under this subsection shall be extended to thirty-
525 five days after the decision of such agency. The commission shall issue
526 notice of its decision as provided by law. Failure of the commission to
527 render a decision within said sixty-five days or subsequent extension
528 period permitted by this subsection shall constitute a rejection of the
529 proposed modification. Within the time period for filing an appeal on
530 the proposed modification as set forth in section 8-8, 8-9, 8-28 or 8-30a,
531 as applicable, the applicant may appeal the commission's decision on
532 the original application and the proposed modification in the manner
533 set forth in this section. Nothing in this subsection shall be construed
534 to limit the right of an applicant to appeal the original decision of the
535 commission in the manner set forth in this section without submitting
536 a proposed modification or to limit the issues which may be raised in
537 any appeal under this section.

538 (i) Nothing in this section shall be deemed to preclude any right of
539 appeal under the provisions of section 8-8, 8-9, 8-28 or 8-30a.

540 (j) A commission or its designated authority shall have, with respect
541 to compliance of an affordable housing development with the
542 provisions of this chapter, the same powers and remedies provided to
543 commissions by section 8-12.

544 (k) Notwithstanding the provisions of subsections (a) to (j),
545 inclusive, of this section, the affordable housing appeals procedure
546 established under this section shall not be available if the real property
547 which is the subject of the application is located in a municipality in
548 which at least ten per cent of all dwelling units in the municipality are
549 (1) assisted housing, or (2) currently financed by Connecticut Housing
550 Finance Authority mortgages, or (3) subject to binding recorded deeds
551 containing covenants or restrictions which require that such dwelling
552 units be sold or rented at, or below, prices which will preserve the
553 units as housing for which persons and families pay thirty per cent or
554 less of income, where such income is less than or equal to eighty per
555 cent of the median income, or (4) mobile manufactured homes located
556 in mobile manufactured home parks or legally approved accessory
557 apartments, which homes or apartments are subject to binding
558 recorded deeds containing covenants or restrictions which require that
559 such dwelling units be sold or rented at, or below, prices which will
560 preserve the units as housing for which, for a period of not less than
561 ten years, persons and families pay thirty per cent or less of income,
562 where such income is less than or equal to eighty per cent of the
563 median income. The municipalities meeting the criteria set forth in this
564 subsection shall be listed in the report submitted under section 8-
565 37qqq. As used in this subsection, "accessory apartment" means a
566 separate living unit that (A) is attached to the main living unit of a
567 house, which house has the external appearance of a single-family
568 residence, (B) has a full kitchen, (C) has a square footage that is not
569 more than thirty per cent of the total square footage of the house, (D)
570 has an internal doorway connecting to the main living unit of the
571 house, (E) is not billed separately from such main living unit for
572 utilities, and (F) complies with the building code and health and safety
573 regulations.

574 (l) (1) Notwithstanding the provisions of subsections (a) to (j),
575 inclusive, of this section, the affordable housing appeals procedure
576 established under this section shall not be applicable to an affordable
577 housing application filed with a commission during a moratorium,

578 which shall be the four-year period after (A) a certification of
579 affordable housing project completion issued by the commissioner is
580 published in the Connecticut Law Journal, or (B) after notice of a
581 provisional approval is published pursuant to subdivision (4) of this
582 subsection. Any moratorium that is in effect on October 1, 2002, is
583 extended by one year.

584 (2) Notwithstanding the provisions of this subsection, such
585 moratorium shall not apply to (A) affordable housing applications for
586 assisted housing in which ninety-five per cent of the dwelling units are
587 restricted to persons and families whose income is less than or equal to
588 sixty per cent of median income, (B) other affordable housing
589 applications for assisted housing containing forty or fewer dwelling
590 units, or (C) affordable housing applications which were filed with a
591 commission pursuant to this section prior to the date upon which the
592 moratorium takes effect.

593 (3) Eligible units completed after a moratorium has begun may be
594 counted toward establishing eligibility for a subsequent moratorium.

595 (4) (A) The commissioner shall issue a certificate of affordable
596 housing project completion for the purposes of this subsection upon
597 finding that there has been completed within the municipality one or
598 more affordable housing developments which create housing unit-
599 equivalent points equal to the greater of two per cent of all dwelling
600 units in the municipality, as reported in the most recent United States
601 decennial census, or [fifty] seventy-five housing unit-equivalent points.

602 (B) A municipality may apply for a certificate of affordable housing
603 project completion pursuant to this subsection by applying in writing
604 to the commissioner, and including documentation showing that the
605 municipality has accumulated the required number of points within
606 the applicable time period. Such documentation shall include the
607 location of each dwelling unit being counted, the number of points
608 each dwelling unit has been assigned, and the reason, pursuant to this
609 subsection, for assigning such points to such dwelling unit. Upon

610 receipt of such application, the commissioner shall promptly cause a
611 notice of the filing of the application to be published in the Connecticut
612 Law Journal, stating that public comment on such application shall be
613 accepted by the commissioner for a period of thirty days after the
614 publication of such notice. Not later than ninety days after the receipt
615 of such application, the commissioner shall either approve or reject
616 such application. Such approval or rejection shall be accompanied by a
617 written statement of the reasons for approval or rejection, pursuant to
618 the provisions of this subsection. If the application is approved, the
619 commissioner shall promptly cause a certificate of affordable housing
620 project completion to be published in the Connecticut Law Journal. If
621 the commissioner fails to either approve or reject the application
622 within such ninety-day period, such application shall be deemed
623 provisionally approved, and the municipality may cause notice of such
624 provisional approval to be published in a conspicuous manner in a
625 daily newspaper having general circulation in the municipality, in
626 which case, such moratorium shall take effect upon such publication.
627 The municipality shall send a copy of such notice to the commissioner.
628 Such provisional approval shall remain in effect unless the
629 commissioner subsequently acts upon and rejects the application, in
630 which case the moratorium shall terminate upon notice to the
631 municipality by the commissioner.

632 (5) For purposes of this subsection, "elderly units" are dwelling units
633 whose occupancy is restricted by age and "family units" are dwelling
634 units whose occupancy is not restricted by age.

635 (6) For purposes of this subsection, housing unit-equivalent points
636 shall be determined by the commissioner as follows: (A) No points
637 shall be awarded for a unit unless its occupancy is restricted to persons
638 and families whose income is equal to or less than eighty per cent of
639 median income, except that unrestricted units in a set-aside
640 development shall be awarded one-fourth point each. (B) Family units
641 restricted to persons and families whose income is equal to or less than
642 eighty per cent of median income shall be awarded one point if an
643 ownership unit and one and one-half points if a rental unit. (C) Family

644 units restricted to persons and families whose income is equal to or
645 less than sixty per cent of median income shall be awarded one and
646 one-half points if an ownership unit and two points if a rental unit. (D)
647 Family units restricted to persons and families whose income is equal
648 to or less than forty per cent of median income shall be awarded two
649 points if an ownership unit and two and one-half points if a rental
650 unit. (E) [Restricted family units containing at least three bedrooms
651 shall be awarded an additional one-fourth point. (F)] Elderly units
652 restricted to persons and families whose income is equal to or less than
653 eighty per cent of median income shall be awarded one-half point. [(G)
654 If at least sixty per cent of the total restricted units submitted by a
655 municipality as part of an application for a certificate of affordable
656 housing project completion are family units, any elderly units
657 submitted within such application shall be awarded an additional one-
658 half point. (H) Restricted family units located within an approved
659 incentive housing development, as defined in section 8-13m, as
660 amended by this act, shall be awarded an additional one-fourth point.
661 (I)] (F) A set-aside development containing family units which are
662 rental units shall be awarded additional points equal to twenty-two
663 per cent of the total points awarded to such development, provided
664 the application for such development was filed with the commission
665 prior to July 6, 1995.

666 (7) Points shall be awarded only for dwelling units which were (A)
667 newly-constructed units in an affordable housing development, as that
668 term was defined at the time of the affordable housing application, for
669 which a certificate of occupancy was issued after July 1, 1990, or (B)
670 newly subjected after July 1, 1990, to deeds containing covenants or
671 restrictions which require that, for at least the duration required by
672 subsection (a) of this section for set-aside developments on the date
673 when such covenants or restrictions took effect, such dwelling units
674 shall be sold or rented at, or below, prices which will preserve the
675 units as affordable housing for persons or families whose income does
676 not exceed eighty per cent of median income. [, or (C) located within
677 an approved incentive housing development, as defined in section 8-

678 13m, as amended by this act.]

679 (8) Points shall be subtracted, applying the formula in subdivision
680 (6) of this subsection, for any affordable dwelling unit which, on or
681 after July 1, 1990, was affected by any action taken by a municipality
682 which caused such dwelling unit to cease being counted as an
683 affordable dwelling unit.

684 (9) A newly-constructed unit shall be counted toward a moratorium
685 when it receives a certificate of occupancy. A newly-restricted unit
686 shall be counted toward a moratorium when its deed restriction takes
687 effect.

688 (10) The affordable housing appeals procedure shall be applicable to
689 affordable housing applications filed with a commission after a three-
690 year moratorium expires, except (A) as otherwise provided in
691 subsection (k) of this section, or (B) when sufficient unit-equivalent
692 points have been created within the municipality during one
693 moratorium to qualify for a subsequent moratorium.

694 (11) The commissioner shall, within available appropriations, adopt
695 regulations in accordance with chapter 54 to carry out the purposes of
696 this subsection. Such regulations shall specify the procedure to be
697 followed by a municipality to obtain a moratorium, and shall include
698 the manner in which a municipality is to document the units to be
699 counted toward a moratorium. A municipality may apply for a
700 moratorium in accordance with the provisions of this subsection prior
701 to, as well as after, such regulations are adopted.

702 (m) The commissioner shall, pursuant to regulations adopted in
703 accordance with the provisions of chapter 54, promulgate model deed
704 restrictions which satisfy the requirements of this section. A
705 municipality may waive any fee which would otherwise be required
706 for the filing of any long-term affordability deed restriction on the land
707 records.

708 Sec. 3. Subdivision (12) of section 8-13m of the general statutes is

709 repealed and the following is substituted in lieu thereof (*Effective*
 710 *October 1, 2016, and applicable to any final determination of eligibility for an*
 711 *incentive housing zone or any grant that has not yet been approved under*
 712 *section 8-13x of the general statutes as of October 1, 2016*):

713 (12) "Median income" means, after adjustments for household size,
 714 the lessor of the state median income or the area median income as
 715 determined by the United States Department of Housing and Urban
 716 Development for the municipality in which an approved incentive
 717 housing zone or development is located.

718 Sec. 4. Subdivision (12) of section 8-13m of the general statutes, as
 719 amended by section 3 of this act, is repealed and the following is
 720 substituted in lieu thereof (*Effective October 1, 2021, and applicable to any*
 721 *final determination of eligibility for an incentive housing zone or any grant*
 722 *that has not yet been approved under section 8-13x of the general statutes as*
 723 *of October 1, 2021*):

724 (12) "Median income" means, after adjustments for household size,
 725 [the lessor of the state median income or] the area median income as
 726 determined by the United States Department of Housing and Urban
 727 Development for the municipality in which an approved incentive
 728 housing zone or development is located."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	8-30g
Sec. 2	<i>October 1, 2021</i>	8-30g
Sec. 3	<i>October 1, 2016, and applicable to any final determination of eligibility for an incentive housing zone or any grant that has not yet been approved under section 8-13x of the general statutes as of October 1, 2016</i>	8-13m(12)

Sec. 4	<i>October 1, 2021, and applicable to any final determination of eligibility for an incentive housing zone or any grant that has not yet been approved under section 8-13x of the general statutes as of October 1, 2021</i>	8-13m(12)
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